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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

C. BROOKS CUTTER,

Plaintiff,

v.

FOOD AND DRUG ADMINISTRATION
and DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants.

No. 1:09-cv-00107-LJO-DLB

**PARTIES' STIPULATION TO
EXTEND PROTEST DATE AND
RESET STATUS CONFERENCE;
ORDER**

Plaintiff, C. Brooks Cutter, and Defendants, the United States Food and Drug Administration ("FDA") and Department of Health and Human Services, through their attorneys, Benjamin B. Wagner, United States Attorney, and Yoshinori H. T. Himel, Assistant United States Attorney, respectfully request that this Court modify the schedule set forth in the Court's Order filed November 2, 2009.

In the "Parties' Stipulation to Stay Action until December 15, 2009, and Reset Status Conference; Proposed Order," approved November 2, 2009, the parties agreed to extend the time permitted for the Plaintiff to challenge FDA's withholdings until January 14, 2010. Plaintiff now needs another 30 days, that is, until February 16, 2010, to decide whether to make that challenge.

1 Should the decision be not to challenge the withholdings, there would be nothing left to litigate,
2 and the parties should be able to stipulate dismissal.

3 The parties will not know the case status until February 16, 2010, which is after the status
4 conference set for February 9, 2010, at 9:00 a.m. before Judge Beck. To serve judicial efficiency,
5 the parties request that the status conference be continued until March 17, 2010, at 9:30 a.m.,
6 before Judge Beck.

7 The parties previously agreed that FDA will not prepare a Vaughn index of redacted
8 information at this time. If Plaintiff decides to challenge FDA's withholdings, FDA agrees to
9 produce a Vaughn index within thirty (30) calendar days after Plaintiff gives defense counsel of
10 record and FDA counsel a notice of his intent to challenge the withholdings.

11 Based upon the foregoing, the parties move this Court to enter an order continuing the
12 status conference set by Order filed November 2, 2009, from February 9, 2010, until March 17,
13 2010, at 9:30 a.m.

14
15 Dated: January 15, 2010

/s/ C. Brooks Cutter
C. BROOKS CUTTER

16 Dated: January 14, 2010

BENJAMIN B. WAGNER
United States Attorney

17
18 By: /s/ Y H T Himel
YOSHINORI H. T. HIMEL
19 Assistant U. S. Attorney

20 Of Counsel:

21 DAVID S. CADE
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23 ERIC M. BLUMBERG
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24 MICHAEL HELBING
Assistant Chief Counsel, Litigation
25 U.S. Dept. of Health & Human Services
Office of the General Counsel
26 5600 Fishers Lane
27 Rockville, MD 20857

ORDER

Good cause appearing, the status conference presently set for 9:00 a.m. on February 9, 2010, is CONTINUED until March 17, 2010, at 9:30 a.m., before Judge Beck.

IT IS SO ORDERED.

Dated: January 15, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE